

November 21, 2016

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petition for Declaratory Ruling Clarifying that Notices Required by Section
76.1602(b) May Be Distributed by Email, MB Docket No. 16-126

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(1) of the Commission's rules, this letter summarizes an *ex parte* meeting on November 17, 2016 between representatives of NCTA - The Internet & Television Association and the Media Bureau. NCTA was represented at the meeting by Michael Schooler, Diane Burstein, Wes Heppler, and Jim Casserly. The Media Bureau was represented by Michelle Carey, Steven Broeckaert, Martha Heller, and Kathleen Costello.

Earlier this year, NCTA and the American Cable Association filed a Petition for Declaratory Ruling asking the Media Bureau to clarify that "written" notices required under Section 76.1602(b) could be distributed by electronic means reasonably calculated to reach individual customers, including, but not limited to, by email to subscribers for whom a cable operator has a confirmed email address and by provision of appropriately-noticed links to websites.¹ (Paper notices would continue to be available to customers who request them.)² The Petition also requested that, given the latitude the Commission has already afforded cable operators under Section 76.1603 to give notice of rate and service changes via newspaper publication, the Bureau could clarify that electronic communications reasonably calculated to reach individual customers are also appropriate for notices required under Section 76.1603.³ The Bureau issued a public notice seeking comments on the petition, and comments and reply comments were duly submitted in May and June 2016. Additionally, NCTA and ACA filed an *ex parte* letter in July to respond to issues that were first raised in the reply round.

¹ NCTA and ACA Petition for Declaratory Ruling at 1, MB Dkt. No. 16-126 (filed Mar. 7, 2016).

² *Id.* at 4 & n.9.

³ *Id.* at 7.

With the scheduled pleading cycle complete, abundant support for the Petition having been expressed, and the few late-filed concerns having been answered, we urged the Bureau to complete its review and act favorably on the Petition as expeditiously as possible. We reiterated the reasons, set forth in our comments, why construing the rule to allow greater use of electronic notices would be convenient for consumers, reduce unnecessary yet burdensome costs for cable operators, and greatly reduce environmental waste. We also emphasized that the requested clarification would continue to enable consumers to receive hard copies of the required notices if they so desired.

Finally, we explained that construing “written notice” to encompass electronic notification in the manner sought by the Petition is not inconsistent with the Electronic Signatures in Global and National Commerce Act (“E-Sign Act”), and that requiring customers to affirmatively elect to receive notices electronically would defeat the purpose of the Petition. No ruling from the Commission is required in order to permit delivery of Section 76.1602 and 76.1603 notices electronically to consumers who have expressly consented to electronic delivery. That is what 15 U.S.C. § 7001(c) automatically allows. As we previously stated, “cable operators *already* have the ability to send these notices electronically where they have opt-in consent [; t]he purpose of the Petition was specifically to ask the Bureau to permit an approach that would *not* require opt-in consent” from the tens of millions of households who subscribe to cable service.⁴

Nor would it be inconsistent with 15 U.S.C. § 7001 or §7004 for the Bureau to construe the Commission’s own rules to allow certain routine notices to be delivered electronically with *opt-out* consent. The goal of the E-Sign Act was to accelerate the use of electronic communications in American commerce, not to retard it. Thus, while agencies may not, according to Section 7004(b), frustrate this purpose by construing a “written notice” requirement in a manner that “*add[s]* to the requirements of” Section 7001,⁵ nothing in the Act prevents an agency from construing such a requirement in a manner that makes electronic notification *more* readily available.

⁴ Letter from Rick Chessen et al., NCTA, and Mary Lovejoy et al., ACA, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 16-126, at 2-3 (July 15, 2016) (“NCTA/ACA Letter”).

⁵ 15 U.S.C. § 7004(b)(2)(B) (emphasis added).

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Finally, we made clear that our Petition applies only to the notices called for by Section 76.1602 and 76.1603. It does not seek any ruling with respect to notices required under *different* rules (e.g., privacy notices).

Sincerely,

/s/ Michael S. Schooler

Michael S. Schooler

cc: Michelle Carey
Steven Broeckaert
Martha Heller
Kathleen Costello